

EXHIBIT 14

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8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 EBAY INC.,

13 Plaintiff,

14 v.

15 DIGITAL POINT SOLUTIONS, INC.,
16 SHAWN HOGAN, KESSLER'S
FLYING CIRCUS, THUNDERWOOD
17 HOLDINGS, INC., TODD DUNNING,
DUNNING ENTERPRISE, INC., BRIAN
DUNNING, BRIANDUNNING.COM,
and DOES 1 - 20,

18 Defendants.
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Case No. C 08-4052 JF

**PLAINTIFF'S FIRST SET OF
REQUESTS FOR ADMISSION TO
DEFENDANT DIGITAL POINT
SOLUTIONS, INC. (Nos. 1-25)**

22 Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Plaintiff eBay Inc.
23 ("eBay"), hereby requests that Defendant Digital Point Solutions, Inc. ("DPS") respond to
24 each of the following requests for admission fully, separately, in writing and under oath,
25 within thirty (30) days of service hereof.
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DEFINITIONS

1. “DPS” shall mean Digital Point Solutions, Inc., and each of its successor, predecessor, and related entities, including, without limitation, its subsidiaries, parent corporations, divisions, assigns, and any officers, directors, agents, employees, representatives, attorneys, or other persons or entities acting on its behalf, collectively, in any combination, or singly, whichever is broader.

2. “eBay” shall mean plaintiff eBay Inc., www.ebay.com, all of eBay’s internationally operated websites, and any and all divisions, subdivisions, departments or subsidiaries of eBay.

3. “Affiliate Marketing Program” shall mean any program by which a company engages or employs third parties (affiliates) to conduct marketing efforts on its behalf.

4. “Cookie Stuffing” is broadly defined to include any scheme that includes the placement by a web server onto a User’s computer of data known as a “cookie” where (a) the placement occurs because the User’s computer accessed that web server and (b) the User did not knowingly access that web server.

5. “User” or “Users” shall mean a third party or parties connected to the internet through a personal computer or by any other means.

6. “Advertisement Link” shall mean any advertisement presented via the internet that, if a User clicks on that advertisement, directs a User’s computer to the website that is owned by or is the subject of the advertisement.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

Admit that DPS conducted business with eBay prior to May 14, 2007.

REQUEST FOR ADMISSION NO. 2:

Admit that DPS conducted business with eBay during at least some portion of 2006.

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2 **REQUEST FOR ADMISSION NO. 3:**

3 Admit that DPS conducted business with eBay during at least some portion of
4 2005.
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6 **REQUEST FOR ADMISSION NO. 4:**

7 Admit that DPS conducted business with eBay during at least some portion of
8 2004.
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10 **REQUEST FOR ADMISSION NO. 5:**

11 Admit that DPS conducted business with eBay during at least some portion of
12 2003.
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14 **REQUEST FOR ADMISSION NO. 6:**

15 Admit that DPS participated in an eBay Affiliate Marketing Program or programs.

16 **REQUEST FOR ADMISSION NO. 7:**

17 Admit that, while participating in an eBay Affiliate Marketing Program or
18 programs, DPS utilized software programs and/or code that caused some Users'
19 computers to access an eBay website without the User's knowledge.
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21 **REQUEST FOR ADMISSION NO. 8:**

22 Admit that, while participating in an eBay Affiliate Marketing Program or
23 programs, DPS utilized software programs and/or code that caused some Users'
24 computers to access an eBay web server without the User's knowledge.
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26 **REQUEST FOR ADMISSION NO. 9:**

27 Admit that, while participating in an eBay Affiliate Marketing Program or
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1 programs, DPS utilized software programs and/or code that redirected a User to an eBay
2 website without the User knowingly clicking on an Advertisement Link.

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4 **REQUEST FOR ADMISSION NO. 10:**

5 Admit that, while participating in an eBay Affiliate Marketing Program or
6 programs, DPS utilized software programs and/or code that redirected a User to an eBay
7 web server without the User knowingly clicking on an Advertisement Link.

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9 **REQUEST FOR ADMISSION NO. 11:**

10 Admit that, while participating in an eBay Affiliate Marketing Program or
11 programs, DPS utilized software programs and/or code that performed Cookie Stuffing.

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13 **REQUEST FOR ADMISSION NO. 12:**

14 Admit that DPS used methods, techniques and/or technological measures to avoid
15 detection by eBay of certain aspects of how DPS interacted with eBay's Affiliate
16 Marketing Program or programs.

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18 **REQUEST FOR ADMISSION NO. 13:**

19 Admit that DPS used methods, techniques and/or technological measures to avoid
20 detection by Commission Junction of certain aspects of how DPS interacted with eBay's
21 Affiliate Marketing Program or programs.

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23 **REQUEST FOR ADMISSION NO. 14:**

24 Admit that DPS utilized methods, techniques and/or technological measures to
25 avoid detection by eBay of Cookie Stuffing caused by DPS.

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27 **REQUEST FOR ADMISSION NO. 15:**

28 Admit that DPS utilized methods, techniques and/or technological measures to

1 avoid detection by Commission Junction of Cookie Stuffing caused by DPS.

2 **REQUEST FOR ADMISSION NO. 16:**

3 Admit that, while participating in an eBay Affiliate Marketing Program or
4 programs, DPS utilized software and/or code to determine the geographic location of a
5 User.
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7 **REQUEST FOR ADMISSION NO. 17:**

8 Admit that, while participating in an eBay Affiliate Marketing Program or
9 programs, DPS utilized software and/or code to determine whether a User was located in
10 San Jose, CA.
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12 **REQUEST FOR ADMISSION NO. 18:**

13 Admit that, while participating in an eBay Affiliate Marketing Program or
14 programs, DPS utilized software and/or code to determine whether a User was located in
15 Santa Barbara, CA.
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17 **REQUEST FOR ADMISSION NO. 19:**

18 Admit that, while participating in an eBay Affiliate Marketing Program or
19 programs, DPS utilized software and/or code that would disable or not engage DPS's
20 Cookie Stuffing technology if a User's computer was located in San Jose, CA.
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22 **REQUEST FOR ADMISSION NO. 20:**

23 Admit that, while participating in an eBay Affiliate Marketing Program or
24 programs, DPS utilized software and/or code that would disable or not engage DPS's
25 Cookie Stuffing technology if a User's computer was located in Santa Barbara, CA.
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1 **REQUEST FOR ADMISSION NO. 21:**

2 Admit that DPS received commissions from eBay, whether directly or through
3 Commission Junction, that were based, in whole or in part, on Users whose computers
4 were directed to eBay's website without the User's knowledge.
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6 **REQUEST FOR ADMISSION NO. 22:**

7 Admit that DPS received commissions from eBay, whether directly or through
8 Commission Junction, that were based, in whole or in part, on Users who had never
9 actually clicked on a DPS-sponsored eBay advertisement link.
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11 **REQUEST FOR ADMISSION NO. 23:**

12 Admit that DPS received commissions from eBay, whether directly or through
13 Commission Junction, that were based, in whole or in part, Cookie Stuffing caused by
14 DPS.
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16 **REQUEST FOR ADMISSION NO. 24:**


17 Admit that DPS engaged in Cookie Stuffing with the intent to defraud eBay.
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19 **REQUEST FOR ADMISSION NO. 25:**

20 Admit that DPS defrauded eBay.
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23 Dated: January 22, 2009

O'MELVENY & MYERS LLP

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25 By: 
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28 Colleen M. Kennedy, Esq.
Attorneys for Plaintiff eBay INC.